

September 26, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L04P0030**
Proposed Ordinance No. **2005-0366**

WOODMARK MEADOWS
Preliminary Plat Application

Location: On the west side of 130th Avenue Northeast between Northeast 197th Street and Northeast 200th Place

Applicant: Harbour Homes
represented by **Luay R. Joudeh**
D.R. Strong Consulting Engineers, Inc.
10604 Northeast 38th Place, Suite 101
Kirkland, Washington 98033
Telephone: (425) 827-3063
Facsimile: (425) 827-2423

King County: Department of Development and Environmental Services,
represented by **Kim Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7167
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:

Approve, subject to conditions

Department's Final Recommendation:

Approve, subject to conditions

Examiner's Decision:

Approve, subject to revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:

September 22, 2005

Hearing Closed:

September 22, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Developer: Harbour Homes
906 SE Everett Mall Way, Suite 400
Everett, WA 98208

Engineer: D.R. Strong Consulting Engineers
10604 NE 38th Place, Suite 101
Kirkland, WA 98033

STR: 4-26-05

Location: The site is located on the west side of 130th Ave NE, between NE 197th St and NE 200th Place, adjoining the Woodinville City limits

Zoning: R-8
Acreage: 7.06 acres
Number of Lots: 56
Density: Approximately 8 units per acre
Lot Size: Approximately 3,300 – 5,500 square feet in size
Proposed Use: Single-family detached dwellings
Sewage Disposal: Woodinville
Water Supply: Woodinville
Fire District: King County Fire District No. 36
School District: Northshore School District No. 417

Complete Application Date: Submitted December 22, 2004
Determined complete January 19, 2005

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the September 22, 2005, public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. Harbour Homes has submitted a preliminary plat application to subdivide 7.06 acres into 56 lots for single-family residential development. This R-8 zoned property is located within a narrow strip of unincorporated King County that lies south of the Snohomish County line between the cities of Bothell and Woodinville. The property will receive access from 130th Avenue Northeast adjacent to the east, which roadway lies entirely within Woodinville. The plat property borders

Bothell on its southern and western sides. Since site drainage flows to the south and east and the dominant traffic movements are to and from the south, County review of this application has been significantly constrained by the circumstance that all offsite plat impacts of consequence occur within other jurisdictions.

4. The proposal entails the replatting of eight existing residential properties, one of which has been cited by the Health Department as housing a meth lab. Decontamination of this property will be required prior to engineering approval. Plat development will include the removal of all existing structures on the eight underlying parcels.
5. Approximately 85 percent of site traffic is expected to travel south along 130th Avenue Northeast to the Northeast 195th Street intersection, where some will split off east to the 195th Street interchange with SR522 and most of the remainder will continue south along 132nd Avenue Northeast to the SR522/SR202 interchange. The PM level of service at the 130th Avenue Northeast/Northeast 195th Street intersection is satisfactory, but neighborhood testimony has suggested that congestion and safety issues may arise during AM commuter hours, particularly when vehicles are accessing nearby high school and grade school campuses. Neighborhood resident Greg Kapfer testified that during these periods traffic backs up north along 130th Avenue Northeast and safety issues arise for student pedestrians. While no AM peak hour level of service studies or accident records have been submitted to this hearing, it is likely that these congestion problems are of rather short duration. It seems probable that this intersection will eventually require signalization, but this is a matter to be determined by the City of Woodinville. Level of service or safety concerns should be brought to the City's attention.
6. Surface water runoff from the Woodmark Meadows site sheetflows to the south and east and eventually ends up in Little Bear Creek about one-half mile to the east. A drainage adjustment issued for the project on September 15, 2005, authorizes consolidation of flows into a single-drainage facility at the southeastern corner of the developed area of the plat. Detained flows will be released south into a roadside ditch along the west side of 130th Avenue Northeast. These flows will first traverse a small portion of the City of Woodinville and as they move further south enter Bothell. Capacity restraints within the downstream conveyance system will require some cleaning and recontouring of the drainage ditch and upgrading of culvert sections downstream of the ditch. Actually fixing these problems will likely be a relatively minor challenge compared with navigating the interjurisdictional bureaucratic maze required to obtain the necessary approvals. Diversion of flows from the northeastern plat subbasin will also need to be analyzed in the context of such diversion's potential effect on base flows to a vegetated drainage channel area immediately to the east across 130th Avenue Northeast.
7. There are some large trees on the plat property that neighborhood residents would like to see preserved. While this plat is subject to a significant tree retention requirement within the zoning code, within a relatively high-density zone such as R-8 the usual consequence of this requirement is not that significant trees are retained but that some are replaced with smaller new plantings. There is also the possibility of some tree retention and landscaped buffering occurring within Tract D at the southeast corner of the property because its narrow 15-foot width does not lend itself to any other use.

8. The current configuration of the underlying properties has parcel 1428900081 in the southwest corner obtaining access east to 130th Avenue Northeast via a driveway along the southern plat boundary that is some 500 feet in length. Due to intersection spacing requirements, both the Applicant and staff prefer that any future roadway in the southern half of the plat align with the existing right-of-way for Northeast 197th Place, which enters 130th Avenue Northeast from the east. This means that the long paved driveway along the southern plat boundary is proposed to be eliminated. Patrick D'Ambrosio, the owner of parcel 6662410060 located directly south of Woodmark Meadows, opposes the elimination of the existing southern boundary driveway because it provides secondary access to his 1/3 acre property. Primary access to his house is obtained from 129th Place Northeast, but since the mid-80s he has used the private driveway on the back side of his property to access a storage area where he parks various vehicles.

Mr. D'Ambrosio claims that his historic use of this driveway has created a prescriptive easement in his favor. While Mr. D'Ambrosio's photographs appear to clearly document his use of the driveway as described, the record contains no basis for determining whether this use has been notorious, adverse and hostile in sufficient degree to legally constitute adverse possession. More critically, determination of Mr. D'Ambrosio's property right, if any, within the driveway is not within the jurisdiction of this proceeding. Both the Applicant and Mr. D'Ambrosio have expressed an interest in amicably resolving this question, and the expectation is that it will be settled prior to final plat approval. One possible solution worth exploring might be to replace Mr. D'Ambrosio's current access east to 130th Avenue Northeast with a driveway north between proposed lots 12 and 13 that connects to the plat's internal road system.

CONCLUSIONS:

1. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
2. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION: The preliminary plat application for Woodmark Meadows, as revised and received on June 3, 2005, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-8 zone classification. All lots shall meet the minimum dimensional requirements of the R-8 zone

classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title. DDES shall review the status of the D'Ambrosio prescriptive easement claim prior to final plat approval to determine whether it is in conflict with the requirements of this condition.

4. The Applicant shall demonstrate that the decontamination notice and order issued by the Seattle-King County Dept. of Public Health has been resolved prior to engineering plan approval (case no. C00034708).
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

8. The stormwater detention facility shall be designed using the Level 1 Flow Control and Basic Water criteria outlined in the 1998 King County Surface Water Design Manual(KCSWDM). A drainage adjustment L05V0044 is approved for this subdivision. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans. At engineering review, DDES shall determine if any portion of the existing flows proposed to be diverted from the northeast subbasin of the plat will be required to maintain base flows to the water course lying east of 130th Avenue Southeast.
9. An offsite drainage conveyance analysis received from the Applicant on June 3rd, 2005, (exhibit 13) identifies several ditch and culvert capacity constraints within Bothell and Woodinville along 130th Ave NE between the south site boundary and Northeast 195th Street. The Applicant shall first determine whether the City of Woodinville will require any of the site flows released south to the 130th Avenue Northeast roadside ditch to be diverted to the east. With respect to any remaining flows to be conveyed south along 130th Avenue Northeast, the Applicant next shall obtain any permits or approvals required from the City of Bothell for the downstream conveyance system upgrades identified within exhibit 13, unless DDES determines that such improvements are no longer necessary due to the easterly flow diversion. Alternatively, the drainage design may include other appropriate mitigation per core requirement 2 of the 1998 King County Surface Water Design Manual, as approved by DDES.
10. The following road improvements are required to be constructed according to the 1993 King County Road Standards (KCRS):
 - a. The internal access roads shall be improved at a minimum to the urban subaccess street standard unless otherwise approved by DDES.
 - b. FRONTAGE: The frontage of the subdivision along 130th Ave NE shall be improved per the City of Woodinville standards and subject to City approval. The Applicant shall provide King County with copies of the Woodinville permit approvals and the final engineering plans shall provide notes indicating the applicable design and construction requirements.

Additional R/W needed for the frontage shall be dedicated to the City upon recording.
 - c. Tracts B and C shall be improved as private access tracts per Section 2.09 of the KCRS.
 - d. Tract A shall be improved as a joint use driveway per Section 3.01 of the KCRS.
 - e. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
12. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first

option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.

13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
14. There shall be no direct vehicular access to or from 130th Ave NE from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
15. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans. Fencing and landscaping shall be provided adjacent to 130th Ave NE to avoid conflicts between recreation tract users and vehicular traffic.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
16. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
17. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners

- association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The Applicant shall contact Metro Service Planning at (206) 684-1622 to determine if 130th Ave NE is on a bus route. If 130th Ave NE is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
18. To implement K.C.C. 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan and engineering plans shall be consistent with the requirements of K.C.C. 21A.38.230. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 21A.38.230.B.4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to K.C.C. 21A.38.230.B.4.d.(2).

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with K.C.C. 21A.38.230.B.6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

ORDERED this 26th day of September, 2005.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 26th day of September, 2005, to the parties and interested persons of record:

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Geonerco Mgmt., Inc.
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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before October 10, 2005***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before October 17, 2005***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE SEPTEMBER 22, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. 104p0030.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker and Kris Langley, representing the Department; Luay Joudeh and John Baringer, representing the Applicant; and Pat D'Ambrosio and Greg Kapfer.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services file no. L04P0030
- Exhibit No. 2 Department of Development and Environmental Services preliminary report dated September 22, 2005
- Exhibit No. 3 Application for Land Use Permits submitted December 22, 2004
- Exhibit No. 4 Environmental Checklist received December 22, 2004
- Exhibit No. 5 Determination of Non-significance issued July 15, 2005
- Exhibit No. 6 Affidavit of posting indicating a posting date of February 10, 2005; received by DDES on February 25, 2005
- Exhibit No. 7 Revised plat map received June 3, 2005
- Exhibit No. 8 Assessors map NE 26-05-04
- Exhibit No. 9 Channelization plan received June 3, 2005
- Exhibit No. 10 Conceptual Road and Drainage Plan received December 22, 2004
- Exhibit No. 11 Level 1 Downstream Analysis by D.R. Strong Consulting Engineers, Inc., received December 22, 2004
- Exhibit No. 12 Revised Level 1 Downstream Analysis by D.R. Strong Consulting Engineers, Inc., received June 3, 2005
- Exhibit No. 13 Conveyance Analysis for Sluther TDA by D.R. Strong Consulting Engineers, Inc., received June 3, 2005
- Exhibit No. 14 Letter dated September 15, 2005, re: 1998 KCSWDM adjustment request (File no. L05V0044)
- Exhibit No. 15 Health Department Notice and Order for parcel no. 142890008105, dated 8/16/05
- Exhibit No. 16 Letter from Patrick M. D'Ambrosio dated September 7, 2005
- Exhibit No. 17 Traffic impact analysis for Woodinville 8 by William Popp Associates dated December 22, 2004
- Exhibit No. 18 Conceptual Landscaping Plan received December 22, 2004
- Exhibit No. 19 Walkway plan received December 22, 2004
- Exhibit No. 20 Letter from Fred & Kala Koch dated September 15, 2005
- Exhibit No. 21 Letter from Pat & Candy D'Ambrosio with attachments (5) dated September 20, 2005